

UNITED STATES DISTRICT COURT

for the
District of

Division

FILED
U.S. DISTRICT COURT

2020 MAR 11 P 2:58

DISTRICT OF UTAH

DEPUTY CLERK

Steven G Pegler
2099 W 4700 S C-114
TAYLORSVILLE UT 84129
801-205-1303

Case No.

2:19 CV 821 CW
(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

DOUG SMITH AUTOPLEX INC dba
DOUG SMITH

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one) ☒ Yes ☐ No

Second Amended

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Steven G Pegler
Street Address	2099 W 4700 S C-114
City and County	TAYLORSVILLE
State and Zip Code	Utah 84129
Telephone Number	801-205-1303
E-mail Address	Steve 56 2000 @ gmail. com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

4. I filed charges with the Equal Employment Opportunity Commission regarding the defendant's discriminatory conduct on or about:

June 12 2019
(Month, Day, Year)

5. The Equal Employment Opportunity Commission sent the attached "Notice of Right to Sue" which I received on:

August 2 2019
(Month, Day, Year)

(Please attach the "Notice of Right to Sue" to this complaint.)

6. The discriminatory acts that are the basis of this suit are:

- | | | |
|---|-------------------------------------|------------------------------|
| a. | <input type="checkbox"/> | Failure to employ me |
| b. | <input type="checkbox"/> | Failure to promote me |
| c. | <input checked="" type="checkbox"/> | Termination of my employment |
| d. | <input type="checkbox"/> | Demotion |
| e. | <input checked="" type="checkbox"/> | Denied equal pay/work |
| f. | <input type="checkbox"/> | Sexual harassment |
| g. | <input checked="" type="checkbox"/> | General harassment |
| Other acts (Be specific: Attach an additional sheet if necessary) | | |
| <u>Retaliation</u> | | |

7. Defendant's conduct is discriminatory with respect to:

- | | | | | | |
|----|--------------------------|----------|----|-------------------------------------|--------------------|
| a. | <input type="checkbox"/> | my race | d. | <input checked="" type="checkbox"/> | my religion |
| b. | <input type="checkbox"/> | my color | e. | <input checked="" type="checkbox"/> | my national origin |
| c. | <input type="checkbox"/> | my sex | f. | <input type="checkbox"/> | my age |

8. I believe that the defendant is still committing these acts against me.

☐ yes

☐ no

N/A No longer there

D. CAUSE OF ACTION

1. I allege that the defendant has discriminated against me and that the following facts form the

Attached

2. Name of first defendant: Doug Smith Autoplex dba
Present mailing address or Doug Smith Subaru
business location: 501 W Main St
American Fork, UT 84003

3. Name of second defendant:
Present mailing address or
business location:

4. Name of third defendant:
Present mailing address or
business location:

(Use additional sheets if necessary.)

C. NATURE OF CASE

1. The address at which I sought employment or was employed by the defendant(s) is:
501 W Main St
American Fork, UT 84003

2. The discriminatory acts occurred on or about:

September 12 2018 and September 2017 through September 12, 2018
(Month, Day, Year)

3. I filed charges with the Anti Discrimination Division of the Utah State Industrial
Commission regarding the defendant's discriminatory conduct on or about:

Only Filed with EEOC June 12 2019
(Month, Day, Year)

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Steven Pegler
2099 W. 4700 S.
Taylorsville, UT 84129

From: Phoenix District Office
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

540-2019-02336

Jeremy A. Yubeta,
Enforcement Supervisor

(602) 640-5028

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fall to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

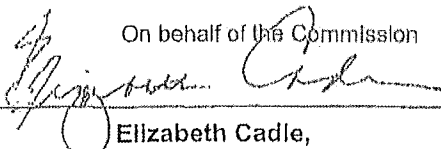
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission



Elizabeth Cadle,
District Director

JUL 31 2019

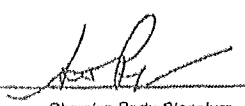
(Date Mailed)

Enclosures(s)

cc: Tiffany Velez
Human Resources
Doug Smith Autoplex
501 West Main
American Fork, UT 84003


7-3 14:19

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 540-2019-02336	
Utah Anti-Discrimination & Labor Division and EEOC <i>State or local Agency, if any</i>			
Name (Indicate Mr., Ms., Mrs.) Steven Pegler		Home Phone (Incl. Area Code) (801) 205-1303	Date of Birth 1952
Street Address City, State and ZIP Code 2099 W. 4700 S., Taylorsville, UT 84129			
Named in the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name DOUG SMITH SUBARU		No. Employees, Members 15 - 100	Phone No. (Include Area Code) (801) 847-1048
Street Address City, State and ZIP Code 501 W. Main St., American Fork, UT 84003			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input checked="" type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 09-12-2018 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). I began working at Respondent in late July 2017 as a salesman. When I began working at Respondent I told manager Derrick Schwandman about my medical condition, how it exhausted me but that I still wanted a job there. He hired me and gave me a schedule that gave me as many hours as everyone else (by not having a day off). On or about March 1, 2018 they reduced my schedule by one 7 hour shift a week. In or around September 2017 salesman Blaine Brady became aggressive with me and got in my face. I complained about this to sales manager Rich Green. Then, in or around October or November 2017, after explaining that a car had already been sold, Brady became aggressive with me again. As I went to Human Resources to report Brady I was met by General Manager Frank Smith. He said he would handle the complaint. So, I told him what happened both times with Brady and Rich Green. Smith reprimanded Green who made Brady apologize to me. However, after this, Green made it difficult for me to close deals. During my tenure Rich Green constantly told me that Utah County people are different (implying that I am not Mormon nor am I as conservative as locals who live in the County).			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Date June 29 2019		Charging Party Signature 	

EEOC Form 5 (11/09)

<p align="center">CHARGE OF DISCRIMINATION</p> <p><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small></p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA</p> <p><input checked="" type="checkbox"/> EEOC 540-2019-02336</p>
<p align="center">Utah Anti-Discrimination & Labor Division and EEOC</p> <p align="center"><small>State or local Agency, if any</small></p>	
<p>I was discharged on or about September 12, 2018 using an inaccurate Google review as an excuse by a customer I had 10 months prior to the review. It was fictitious and I had told Rich Green about this customer at the time. He referred to me as a fat Jewish bald liberal guy and because I still saw reviews he complained about the whole dealership and management 6 months after I was fired.</p> <p>I believe I have been retaliated against for complaining about Brady and discriminated against due to my religion, Jewish and my national origin, in violation of Title VII of the Civil Rights Act of 1964, as amended. I believe I have been discriminated against due to my age in violation of the Age Discrimination in Employment Act of 1967, as amended. I believe I have been discriminated against in violation of the Americans with Disabilities Act of 1990, as amended.</p>	

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p>	<p>NOTARY – When necessary for State and Local Agency Requirements</p>
<p>I declare under penalty of perjury that the above is true and correct.</p>	<p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT</p>
<p>June 29 2019 </p> <p>Date Charging Party Signature</p>	<p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</p> <p>(month, day, year)</p>

Cause of Action – Harassment

Violation of Title VII of the Civil Rights Act of 1964

I had to work in a hostile environment with great trepidation.

1) Approximately October 2017

I told sales manager Rich Green how co-worker Blaine Brady screamed threateningly, inches from my face, for several minutes. He had charged out of the showroom (with customers at his desk watching) because I accidentally set off a car alarm by the showroom. I thought he was going to hit me. Rich Green made Blaine Brady apologize to me the next day. He did not report the incident to Human Resources as Doug Smith Subaru policy requires. No disciplinary action was taken and no professional counseling was given.

2) Approximately Two months later

I told Blaine Brady and his customers I had just sold a car he was about to show them on a very busy Saturday. He started screaming at me in front of his customers and alarming several others nearby. He was upset because there was not a sold sign on the car. Sold signs are only put on cars pre-sold off the truck that brings them to the dealership. I bypassed Rich Green and asked General Manager Frank Smith where the Human Resources lady's office was located. I explained both incidents. He said he would handle it. Blaine Brady apologized the next day. No actions were taken.

Reporting the incidents drove senior sales manager Rich Green to retaliate. Increased anxiety had me seeing my doctor several times. After several visits my doctor suggested I might be better off quitting. I believe at times it affected my performance. The retaliation eventually led to my firing. I feared a more serious result next time it happened.

Cause of Action – Retaliation

Violation of Title VII of the Civil Rights Act of 1964

Managers Rich Green, Derrick Schwendiman, and John Cassel retaliated against me for taking harassment complaints to Frank Smith.

1) Approximately March 1st or 2nd 2018

Instead of working a double shift once a week and having a day off it was agreed by Derrick Schwendiman I would have no days off and no double shift because of my disability – sleep apnea. This was agreed when I was hired in September 2017. I came in second in sales in February 2018 and had my best month. Rich Green and John Cassel told me I could work only 4 days starting this month, March 2018. The reason was “it wasn’t right.”

2) Rich Green made my sales deals harder to close when he could. I told many customers to come back when he was not there. Some did. I learned to go to Derrick Schwendiman when I thought the circumstances might turn out better. All worked deals are saved in the computer. It can be looked up where a deal was left off and how it was worked if the customer comes in to buy again.

Doug Smith Subaru’s policy states if a salesman does not sell at least 7 cars a month in consecutive months they would be terminated. Less hours made this more difficult. My financial opportunities were reduced.

Cause of Action - Religion

Violation of Title VII of the Civil Rights Act of 1964

1) Approximately Sept 2017

All 10 employees and all 4 managers at Doug Smith Subaru were LDS when I started working there. When I was fired approximately September 12 2018; 13 of the 14 salesmen and the 4 managers were LDS.

2) Approximately Sept 12 2018

An Anti-Semitic google review criticizing me was the reason sales managers Rich Green, Derrick Schwendiman, and John Cassel gave for firing me. Derrick Schwendiman said Subaru of America would be told about this review. The review was about Johnathan Coyne's experience approximately 10 months prior that Rich Green handled and to paraphrase said the customer was "looking to get something." Rich Green took no action against me when it happened. Upon firing me he said he vaguely remembered it.

Doug Smith Subaru's sales managers did not investigate the review. They received another google review that was blistering and nasty review 6 months later about the management; it did not mention me at all. I saw the review as I was still getting the notifications on my email. They used religion to fire me and damage my career and income. Doug Smith Subaru's top salesman for 12 years told me there is a learning curve of 1 year. I was about to take off – he's been making over 6 figures for several years.

Request for Relief

Referring to my injury – I ask for \$132,000 plus damages.

I earned approximately \$38,000 from Doug Smith Subaru in 2018. Prorated to the end of the year I would have earned about \$50,000. I believe my experience would have translated to a 20% increase the following 2 years. \$60,000 the first year, \$72,000 the second year.

Steven Pegler
X At B

March 11, 2020
2020

I mailed with Federal Express a
copy. Enclosed receipt

At B

JS 44 (Rev. 08/18)

Amended CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Steven G. Pegler

(b) County of Residence of First Listed Plaintiff SALT LAKE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Doug Smith Subaru

County of Residence of First Listed Defendant Utah(IN U.S. PLAINTIFF CASES ONLY)
IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	LABOR	IMMIGRATION	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(n)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Title VII of the Civil Rights Act of 1964
Brief description of cause:
Discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

Case: 2:19-cv-00821

Assigned To: Jenkins, Bruce S.

Assign. Date: 10/25/2019

Description: Pegler v. Doug Smith Subaru